



Reprinted  
January 25, 2008

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## HOUSE BILL No. 1074

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DIGEST OF HB 1074 (Updated January 24, 2008 3:25 pm - DI 106)

**Citations Affected:** IC 35-44; IC 35-50; noncode.

**Synopsis:** Disarming a law enforcement officer. Makes it a Class C felony if a person knows that another person is a law enforcement officer or corrections officer and the person knowingly or intentionally takes or attempts to take a firearm or weapon from the officer or from the immediate proximity of the officer without the consent of the officer and while the officer is engaged in the performance of his or her official duties. Enhances this crime to a Class B felony if the officer is injured and a Class A felony if the officer dies or if the officer is injured and a firearm was taken. Allows a court to suspend only that part of a sentence that is in excess of the minimum sentence imposed on a person convicted of disarming a law enforcement officer. Requires a prosecuting attorney to seek a sentence of death against a person who: (1) kills a law enforcement officer acting in the line of duty; or (2) whose murder was motivated by an act the law enforcement officer performed in the line of duty. Provides that, in the trial of a person charged with killing a law enforcement officer in the line of duty or in retaliation for an official act of the law enforcement officer, a jury must recommend either a sentence of death or a sentence of life without parole if it finds that the state has proved that the defendant killed a law enforcement officer in the line of duty or in retaliation for an official act of the law enforcement officer. Makes conforming amendments.

**Effective:** July 1, 2008.

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**Soliday, Lawson L, Hinkle,  
VanDenburgh**

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January 8, 2008, read first time and referred to Committee on Judiciary.  
January 22, 2008, amended, reported — Do Pass.  
January 24, 2008, read second time, amended, ordered engrossed.

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HB 1074—LS 6371/DI 107+



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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1074

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 35-44-3-3.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2008]: **Sec. 3.5. (a) As used in this section, "officer" includes the**  
4 **following:**

5           (1) **A person employed by:**

6                **(A) the department of correction;**

7                **(B) a law enforcement agency;**

8                **(C) a probation department;**

9                **(D) a county jail; or**

10              **(E) a circuit, superior, county, probate, city, or town court.**

11           (2) **A law enforcement officer.**

12       **(b) A person who:**

13           (1) **knows that another person is an officer; and**

14           (2) **knowingly or intentionally takes or attempts to take a**  
15 **firearm (as defined in IC 35-47-1-5) or weapon that the officer**  
16 **is authorized to carry from the officer or from the immediate**  
17 **proximity of the officer:**

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(A) without the consent of the officer; and

(B) while the officer is engaged in the performance of his or her official duties;

commits disarming a law enforcement officer, a Class C felony. However, the offense is a Class B felony if it results in serious bodily injury to the officer, and the offense is a Class A felony if it results in death to the officer or if a firearm (as defined in IC 35-47-1-5) was taken and the offense results in serious bodily injury to the officer.

SECTION 2. IC 35-50-2-2, AS AMENDED BY P.L.216-2007, SECTION 50, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) Except as provided in subsection (i), with respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under IC 11-12-3.7:

(1) The crime committed was a Class A **felony** or Class B felony and the person has a prior unrelated felony conviction.

(2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.

(3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.

(4) The felony committed was:

(A) murder (IC 35-42-1-1);

(B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;

(C) sexual battery (IC 35-42-4-8) with a deadly weapon;

(D) kidnapping (IC 35-42-3-2);

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- 1 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 2 (F) rape (IC 35-42-4-1) as a Class A felony;
- 3 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 4 felony;
- 5 (H) except as provided in subsection (i), child molesting
- 6 (IC 35-42-4-3) as a Class A or Class B felony, unless:
- 7 (i) the felony committed was child molesting as a Class B
- 8 felony;
- 9 (ii) the victim was not less than twelve (12) years old at the
- 10 time the offense was committed;
- 11 (iii) the person is not more than four (4) years older than the
- 12 victim, or more than five (5) years older than the victim if
- 13 the relationship between the person and the victim was a
- 14 dating relationship or an ongoing personal relationship (not
- 15 including a family relationship);
- 16 (iv) the person did not have a position of authority or
- 17 substantial influence over the victim; and
- 18 (v) the person has not committed another sex offense (as
- 19 defined in IC 11-8-8-5.2) (including a delinquent act that
- 20 would be a sex offense if committed by an adult) against any
- 21 other person;
- 22 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 23 with a deadly weapon;
- 24 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 25 injury;
- 26 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 27 or with a deadly weapon;
- 28 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 29 weapon;
- 30 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 31 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 32 (O) dealing in cocaine or a narcotic drug (IC 35-48-4-1) if the
- 33 court finds the person possessed a firearm (as defined in
- 34 IC 35-47-1-5) at the time of the offense, or the person
- 35 delivered or intended to deliver to a person under eighteen
- 36 (18) years of age at least three (3) years junior to the person
- 37 and was on a school bus or within one thousand (1,000) feet
- 38 of:
- 39 (i) school property;
- 40 (ii) a public park;
- 41 (iii) a family housing complex; or
- 42 (iv) a youth program center;

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(P) dealing in methamphetamine (IC 35-48-4-1.1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver the methamphetamine pure or adulterated to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(Q) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:

- (i) school property;
- (ii) a public park;
- (iii) a family housing complex; or
- (iv) a youth program center;

(R) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;

(S) an offense under IC 9-30-5-5(b) (operating a vehicle while intoxicated causing death); or

(T) aggravated battery (IC 35-42-2-1.5); or

**(U) disarming a law enforcement officer (IC 35-44-3-3.5).**

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of the sentence of a sex or violent offender (as defined in IC 11-8-8-5) that is suspendible under subsection (b), the court shall place the sex or violent offender on probation under IC 35-38-2 for not more than ten (10) years.

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(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) or IC 35-48-4-6.1(b)(1)(B) may not be suspended.

(i) If a person is:

(1) convicted of child molesting (IC 35-42-4-3) as a Class A felony against a victim less than twelve (12) years of age; and

(2) at least twenty-one (21) years of age;

the court may suspend only that part of the sentence that is in excess of thirty (30) years.

SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.99-2007, SECTION 213, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) **Except as provided in subsection (m), this section does not apply to a defendant described in section 9.5 of this chapter.** The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

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- 1 (2) The defendant committed the murder by the unlawful
- 2 detonation of an explosive with intent to injure person or damage
- 3 property.
- 4 (3) The defendant committed the murder by lying in wait.
- 5 (4) The defendant who committed the murder was hired to kill.
- 6 (5) The defendant committed the murder by hiring another person
- 7 to kill.
- 8 (6) The victim of the murder was a corrections employee,
- 9 probation officer, parole officer, community corrections worker,
- 10 home detention officer, fireman, ~~or judge, or law enforcement~~
- 11 ~~officer~~, and either:
- 12 (A) the victim was acting in the course of duty; or
- 13 (B) the murder was motivated by an act the victim performed
- 14 while acting in the course of duty.
- 15 (7) The defendant has been convicted of another murder.
- 16 (8) The defendant has committed another murder, at any time,
- 17 regardless of whether the defendant has been convicted of that
- 18 other murder.
- 19 (9) The defendant was:
- 20 (A) under the custody of the department of correction;
- 21 (B) under the custody of a county sheriff;
- 22 (C) on probation after receiving a sentence for the commission
- 23 of a felony; or
- 24 (D) on parole;
- 25 at the time the murder was committed.
- 26 (10) The defendant dismembered the victim.
- 27 (11) The defendant burned, mutilated, or tortured the victim while
- 28 the victim was alive.
- 29 (12) The victim of the murder was less than twelve (12) years of
- 30 age.
- 31 (13) The victim was a victim of any of the following offenses for
- 32 which the defendant was convicted:
- 33 (A) Battery as a Class D felony or as a Class C felony under
- 34 IC 35-42-2-1.
- 35 (B) Kidnapping (IC 35-42-3-2).
- 36 (C) Criminal confinement (IC 35-42-3-3).
- 37 (D) A sex crime under IC 35-42-4.
- 38 (14) The victim of the murder was listed by the state or known by
- 39 the defendant to be a witness against the defendant and the
- 40 defendant committed the murder with the intent to prevent the
- 41 person from testifying.
- 42 (15) The defendant committed the murder by intentionally

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1           discharging a firearm (as defined in IC 35-47-1-5):

2           (A) into an inhabited dwelling; or

3           (B) from a vehicle.

4           (16) The victim of the murder was pregnant and the murder  
5           resulted in the intentional killing of a fetus that has attained  
6           viability (as defined in IC 16-18-2-365).

7           (c) The mitigating circumstances that may be considered under this  
8           section are as follows:

9           (1) The defendant has no significant history of prior criminal  
10          conduct.

11          (2) The defendant was under the influence of extreme mental or  
12          emotional disturbance when the murder was committed.

13          (3) The victim was a participant in or consented to the defendant's  
14          conduct.

15          (4) The defendant was an accomplice in a murder committed by  
16          another person, and the defendant's participation was relatively  
17          minor.

18          (5) The defendant acted under the substantial domination of  
19          another person.

20          (6) The defendant's capacity to appreciate the criminality of the  
21          defendant's conduct or to conform that conduct to the  
22          requirements of law was substantially impaired as a result of  
23          mental disease or defect or of intoxication.

24          (7) The defendant was less than eighteen (18) years of age at the  
25          time the murder was committed.

26          (8) Any other circumstances appropriate for consideration.

27          (d) If the defendant was convicted of murder in a jury trial, the jury  
28          shall reconvene for the sentencing hearing. If the trial was to the court,  
29          or the judgment was entered on a guilty plea, the court alone shall  
30          conduct the sentencing hearing. The jury or the court may consider all  
31          the evidence introduced at the trial stage of the proceedings, together  
32          with new evidence presented at the sentencing hearing. The court shall  
33          instruct the jury concerning the statutory penalties for murder and any  
34          other offenses for which the defendant was convicted, the potential for  
35          consecutive or concurrent sentencing, and the availability of good time  
36          credit and clemency. The court shall instruct the jury that, in order for  
37          the jury to recommend to the court that the death penalty or life  
38          imprisonment without parole should be imposed, the jury must find at  
39          least one (1) aggravating circumstance beyond a reasonable doubt as  
40          described in subsection (1) and shall provide a special verdict form for  
41          each aggravating circumstance alleged. The defendant may present any  
42          additional evidence relevant to:

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(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the

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petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the

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aggravating circumstance or circumstances.

(m) The state may proceed against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in section 9.5(a) of this chapter and in subsection (b). If the state proceeds against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in section 9.5(a) of this chapter and in subsection (b), the procedures described in:

- (1) this section apply to the proceedings concerning the aggravating circumstances described in subsection (b); and
- (2) section 9.5 of this chapter apply to the proceedings concerning the aggravating circumstances described in subsection (b).

Procedures described in this section and section 9.5 of this chapter shall be combined if they are not inconsistent with each other.

SECTION 4. IC 35-50-2-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9.5. (a) If the prosecuting attorney has reason to believe that the defendant committed murder and the victim was a law enforcement officer:

- (1) acting in the line of duty (including an off duty officer who identified himself or herself as a law enforcement officer); or
- (2) whose murder was motivated by an act the law enforcement officer performed while acting in the course of duty;

the state shall seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging the existence of one (1) or both of these aggravating circumstances on a page separate from the rest of the charging instrument. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and

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1 clemency. The court shall instruct the jury that, in order for the  
 2 jury to recommend to the court that the death penalty or life  
 3 imprisonment without parole should be imposed, the jury must  
 4 find beyond a reasonable doubt the existence of at least one (1) of  
 5 the aggravating circumstances described in subsection (a), and  
 6 shall provide a special verdict form for these aggravating  
 7 circumstances. The defendant may present any additional evidence  
 8 relevant to:

9 (1) the aggravating circumstances alleged; or

10 (2) any of the mitigating circumstances listed in subsection (c).

11 (c) The mitigating circumstances that may be considered under  
 12 this section are as follows:

13 (1) The defendant has no significant history of prior criminal  
 14 conduct.

15 (2) The defendant was under the influence of extreme mental  
 16 or emotional disturbance when the murder was committed.

17 (3) The victim was a participant in or consented to the  
 18 defendant's conduct.

19 (4) The defendant was an accomplice in a murder committed  
 20 by another person, and the defendant's participation was  
 21 relatively minor.

22 (5) The defendant acted under the substantial domination of  
 23 another person.

24 (6) The defendant's capacity to appreciate the criminality of  
 25 the defendant's conduct or to conform that conduct to the  
 26 requirements of law was substantially impaired as a result of  
 27 mental disease or defect or of intoxication.

28 (7) The defendant was less than eighteen (18) years of age at  
 29 the time the murder was committed.

30 (8) Any other circumstances appropriate for consideration.

31 (d) Except as provided by IC 35-36-9, if the hearing is by jury,  
 32 the jury shall recommend to the court whether the death penalty  
 33 or life imprisonment without parole should be imposed. The jury  
 34 may recommend:

35 (1) the death penalty; or

36 (2) life imprisonment without parole;

37 only if it makes the findings described in subsection (k). If the jury  
 38 makes the findings described in subsection (k), the jury may not  
 39 recommend that the defendant be sentenced to a term of years. If  
 40 the state seeks a sentence of life imprisonment without parole and  
 41 does not seek the death penalty, the jury shall recommend a  
 42 sentence of life imprisonment without parole if it makes the

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findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(e) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(f) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

if it makes the findings described in subsection (k). If the court makes the findings described in subsection (k), the court may not sentence the defendant to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the court shall impose a sentence of life imprisonment without parole if it makes the findings described in subsection (k).

(g) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(h) If a person sentenced to death by a court files a petition for postconviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional postconviction relief. The attorney general shall answer the petition for postconviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may

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1 dismiss the petition within ninety (90) days without conducting a  
2 hearing under this subsection.

3 (i) A death sentence is subject to automatic review by the  
4 supreme court. The review, which shall be heard under rules  
5 adopted by the supreme court, shall be given priority over all other  
6 cases. The supreme court's review must take into consideration all  
7 claims that the:

8 (1) conviction or sentence was in violation of the:

9 (A) Constitution of the State of Indiana; or

10 (B) Constitution of the United States;

11 (2) sentencing court was without jurisdiction to impose a  
12 sentence; and

13 (3) sentence:

14 (A) exceeds the maximum sentence authorized by law; or

15 (B) is otherwise erroneous.

16 If the supreme court cannot complete its review by the date set by  
17 the sentencing court for the defendant's execution under subsection  
18 (g), the supreme court shall stay the execution of the death sentence  
19 and set a new date to carry out the defendant's execution.

20 (j) A person who has been sentenced to death and who has  
21 completed state postconviction review proceedings may file a  
22 written petition with the supreme court seeking to present new  
23 evidence challenging the person's guilt or the appropriateness of  
24 the death sentence if the person serves notice on the attorney  
25 general. The supreme court shall determine, with or without a  
26 hearing, whether the person has presented previously undiscovered  
27 evidence that undermines confidence in the conviction or the death  
28 sentence. If necessary, the supreme court may remand the case to  
29 the trial court for an evidentiary hearing to consider the new  
30 evidence and its effect on the person's conviction and death  
31 sentence. The supreme court may not make a determination in the  
32 person's favor nor make a decision to remand the case to the trial  
33 court for an evidentiary hearing without first providing the  
34 attorney general with an opportunity to be heard on the matter.

35 (k) Before a sentence may be imposed under this section, the  
36 jury, in a proceeding under subsection (d), or the court, in a  
37 proceeding under subsection (f), must find that the state has  
38 proved beyond a reasonable doubt that at least one (1) of the  
39 aggravating circumstances listed in subsection (a) exists.

40 (l) The state may proceed against a defendant who is alleged to  
41 have committed murder and at least one (1) aggravating  
42 circumstance described in subsection (a) and in section 9(b) of this

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1 chapter. If the state proceeds against a defendant who is alleged to  
2 have committed murder and at least one (1) aggravating  
3 circumstance described in subsection (a) and in section 9(b) of this  
4 chapter, the procedures described in:

- 5 (1) this section apply to the proceedings concerning the  
6 aggravating circumstances described in subsection (a); and  
7 (2) section 9 of this chapter apply to the proceedings  
8 concerning the aggravating circumstances described in  
9 section 9(b) of this chapter.

10 Procedures described in this section and section 9 of this chapter  
11 shall be combined if they are not inconsistent with each other.

12 SECTION 5. [EFFECTIVE JULY 1, 2008] IC 35-50-2-9, as  
13 amended by this act, and IC 35-50-2-9.5, as added by this act, apply  
14 only to crimes committed after June 30, 2008.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1074, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, after "takes" insert "**or attempts to take**".

and when so amended that said bill do pass.

(Reference is to HB 1074 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 9, nays 0.

## HOUSE MOTION

Mr. Speaker: I move that House Bill 1074 be amended to read as follows:

Page 5, after line 14, begin a new paragraph and insert:

"SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.99-2007, SECTION 213, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) **Except as provided in subsection (m), this section does not apply to a defendant described in section 9.5 of this chapter.**The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is an individual with mental retardation.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).

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- (E) Kidnapping (IC 35-42-3-2).
- (F) Rape (IC 35-42-4-1).
- (G) Robbery (IC 35-42-5-1).
- (H) Carjacking (IC 35-42-5-2).
- (I) Criminal gang activity (IC 35-45-9-3).
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.
- (3) The defendant committed the murder by lying in wait.
- (4) The defendant who committed the murder was hired to kill.
- (5) The defendant committed the murder by hiring another person to kill.
- (6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, ~~or judge, or law enforcement officer~~, and either:
  - (A) the victim was acting in the course of duty; or
  - (B) the murder was motivated by an act the victim performed while acting in the course of duty.
- (7) The defendant has been convicted of another murder.
- (8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.
- (9) The defendant was:
  - (A) under the custody of the department of correction;
  - (B) under the custody of a county sheriff;
  - (C) on probation after receiving a sentence for the commission of a felony; or
  - (D) on parole;
 at the time the murder was committed.
- (10) The defendant dismembered the victim.
- (11) The defendant burned, mutilated, or tortured the victim while the victim was alive.
- (12) The victim of the murder was less than twelve (12) years of age.
- (13) The victim was a victim of any of the following offenses for which the defendant was convicted:
  - (A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.
  - (B) Kidnapping (IC 35-42-3-2).
  - (C) Criminal confinement (IC 35-42-3-3).

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(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for

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the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (l) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set

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the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
  - (A) Constitution of the State of Indiana; or
  - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
  - (A) exceeds the maximum sentence authorized by law; or
  - (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) A person who has been sentenced to death and who has completed state post-conviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(l) Before a sentence may be imposed under this section, the jury,

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in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

- (1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and
- (2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

**(m) The state may proceed against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in section 9.5(a) of this chapter and in subsection (b). If the state proceeds against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in section 9.5(a) of this chapter and in subsection (b), the procedures described in:**

- (1) this section apply to the proceedings concerning the aggravating circumstances described in subsection (b); and**
- (2) section 9.5 of this chapter apply to the proceedings concerning the aggravating circumstances described in subsection (b).**

**Procedures described in this section and section 9.5 of this chapter shall be combined if they are not inconsistent with each other.**

**SECTION 4. IC 35-50-2-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9.5. (a) If the prosecuting attorney has reason to believe that the defendant committed murder and the victim was a law enforcement officer:**

- (1) acting in the line of duty (including an off duty officer who identified himself or herself as a law enforcement officer); or**
- (2) whose murder was motivated by an act the law enforcement officer performed while acting in the course of duty;**

**the state shall seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging the existence of one (1) or both of these aggravating circumstances on a page separate from the rest of the charging instrument. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.**

**(b) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court**

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may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances described in subsection (a), and shall provide a special verdict form for these aggravating circumstances. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(c) The mitigating circumstances that may be considered under this section are as follows:

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.
- (3) The victim was a participant in or consented to the defendant's conduct.
- (4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.
- (5) The defendant acted under the substantial domination of another person.
- (6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.
- (7) The defendant was less than eighteen (18) years of age at the time the murder was committed.
- (8) Any other circumstances appropriate for consideration.

(d) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole should be imposed. The jury may recommend:

- (1) the death penalty; or
- (2) life imprisonment without parole;

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only if it makes the findings described in subsection (k). If the jury makes the findings described in subsection (k), the jury may not recommend that the defendant be sentenced to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the jury shall recommend a sentence of life imprisonment without parole if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(e) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(f) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole;

if it makes the findings described in subsection (k). If the court makes the findings described in subsection (k), the court may not sentence the defendant to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the court shall impose a sentence of life imprisonment without parole if it makes the findings described in subsection (k).

(g) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(h) If a person sentenced to death by a court files a petition for postconviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional postconviction relief. The attorney general shall answer the

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petition for postconviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(i) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
  - (A) Constitution of the State of Indiana; or
  - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
  - (A) exceeds the maximum sentence authorized by law; or
  - (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (g), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(j) A person who has been sentenced to death and who has completed state postconviction review proceedings may file a written petition with the supreme court seeking to present new evidence challenging the person's guilt or the appropriateness of the death sentence if the person serves notice on the attorney general. The supreme court shall determine, with or without a hearing, whether the person has presented previously undiscovered evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (d), or the court, in a

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proceeding under subsection (f), must find that the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (a) exists.

(l) The state may proceed against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in subsection (a) and in section 9(b) of this chapter. If the state proceeds against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in subsection (a) and in section 9(b) of this chapter, the procedures described in:

- (1) this section apply to the proceedings concerning the aggravating circumstances described in subsection (a); and
- (2) section 9 of this chapter apply to the proceedings concerning the aggravating circumstances described in section 9(b) of this chapter.

Procedures described in this section and section 9 of this chapter shall be combined if they are not inconsistent with each other.

SECTION 5. [EFFECTIVE JULY 1, 2008] IC 35-50-2-9, as amended by this act, and IC 35-50-2-9.5, as added by this act, apply only to crimes committed after June 30, 2008."

(Reference is to HB 1074 as printed January 22, 2008.)

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